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No. 85-1362

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PAUL A. STERN, ET AL,

Petitioners,

v.

TARRANT COUNTY HOSPITAL DISTRICT, ET AL,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF AMERICAN OSTEOPATHIC ASSOCIATION AS AMICUS CURIAE

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INTEREST OF AMICUS CURIAE

The American Osteopathic Association ("AOA") is a national professional association established in 1897 to promote the public health, to encourage scientific research and to maintain the high standards of medical education in osteopathic colleges. The AOA accredits 15 colleges of osteopathic medicine and 220 osteopathic hospitals nationwide. In addition, the AOA approves over 1500 positions in osteopathic intern training programs and 1800 residency positions in osteopathic institutions. The AOA's membership has grown to over 18,000, representing nearly 80 percent of the total number of osteopathic physicians practicing in the United States.

The ruling of the court below has a significant impact on each of these physicians, the hospitals in which they practice and the public health which they serve. Therefore, in keeping with its goals and objectives, the AOA has a substantial interest in this case and seeks to aid this Court in resolving the threatening situation caused by the lower court's ruling. Pursuant to Rule 36.1 of the Supreme Court Rules, the AOA has secured and appended the written consent of all the parties to present this amicus brief.

ARGUMENT

The central issue in this case is access to public hospitals by osteopathic physicians and their patients. Throughout the United States, state legislatures have enacted legislation to ensure that access. In general, this legislation prohibits denial of staff privileges solely on the basis that the treating physician is an osteopathic physician.

The present action involves enforcement of a Texas statute which expressly prohibits hospitals from granting or denying medical appointments or staff privileges "solely on the basis of the academic medical degree held. . . ." Tex. Rev. Civ. Stat. Ann. art. 4495b, subchapter A, § 1.02(9) (Vernon Supp. 1986). At least eleven states have such statutes.[1] These equal access statutes evidence a national trend expressed by the state legislatures to eliminate arbitrary and unfounded distinctions between allopathic and osteopathic practitioners of medicine. Such statutes, and particularly the Texas statute at issue here, confer upon osteopathic physicians and their patients equal access to public hospitals.

Petitioners are osteopathic physicians who were denied staff privileges at a public hospital. At trial the parties stipulated that the sole reason petitioners were denied staff privileges was because they had completed their post-doctoral training in osteopathic, as opposed to allopathic, institutions. The hospital's unfair rationale clearly violates the Texas statute and the equal protection guarantees of the fourteenth amendment.

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[1] *See* Cal. Health & Safety Code § 1316(b) (West 1979); Fla. Stat. Ann. § 395.011 (West Supp. 1986); Ind. Code Ann. § 16-12.1-5-1 (Burns Supp. 1985); Mich. Comp. Laws Ann. § 331.163 (West 1980); Mo. Ann. Stat. § 205.300 (Vernon 1983); Nev. Rev. Stat. § 450.430 (1979); N.Y. Pub. Health Law § 2801-b (McKinney 1985); Ohio Rev. Code Ann. § 3701.351 (Page Supp. 1985); S.C. Code Ann. § 44-7-770 (Law. Co-op 1985); Tex. Rev. Civ. Stat. Ann. art. 4495b, subchapter A, § 1.02(9) (Vernon Supp. 1986); Wisc. Stat. Ann. § 50.36(3) (West Supp. 1985).

The petition for a writ of certiorari filed by petitioners demonstrates the fourteenth amendment issues raised by the discriminatory administration of the Texas statute. Rather than restating those issues, the AOA wishes to bring to this Court's attention the crucial public health issue involved in this constitutional dispute.

Today the osteopathic profession is on an equal footing with allopathic practitioners in the diagnosis and treatment of disease. In Texas, as in other states, all allopathic physicians and osteopathic physicians pass the same licensing examination and meet the same qualifications required by the state board of medical examiners. Consequently, there is no basis for distinguishing between osteopathic physicians and allopathic physicians in terms of the quality or delivery of health care services.

Nonetheless, as noted by the dissent in the court below, respondents have ignored the directive of the Texas legislature and subjected osteopathic physicians and their patients to "the bigotry of an allopathic-dominated hospital district that refuses to be bothered by either the state law, the federal constitution or the facts." 778 F.2d at 1067 (Rubin, J., dissenting). The Fifth Circuit's decision in this case puts public hospitals on notice throughout the United States that they need not comply with their state's equal access statute.

The denial of hospital privileges to osteopathic physicians means that they will have difficulty providing complete medical services to their patients. For instance, if a family's physician who has provided medical care for years diagnoses a condition which requires hospitalization, he will be forced to abandon his patient at the hospital door because the public hospital to which his patient is admitted has arbitrarily refused to accord staff privileges to osteopathic physicians. The public interest is thereby harmed, because patients who desire osteopathic care cannot receive such care due to a hospital's arbitrary refusal to accord staff privileges to osteopathic physicians.

The Fifth Circuit's decision is certain to produce further litigation throughout the nation as allopathic-dominated institutions realize they are free to discriminate against osteopathic practitioners in spite of legislative directives to the contrary. That process will surely damage the care being received by the nation's public and mandates that this Court grant the petition for a writ of certiorari.

CONCLUSION

For the reasons stated above, the AOA urges this Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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Re: No. 85-1362

Paul A. Stern, et al v.
Tarrant County Hospital District, et al

Gentlemen:

It is my understanding that you wish to prepare and file an amicus curiae brief on behalf of the American Osteopathic Association. On behalf of the Petitioners I consent to this proposed amicus curiae appearance.

Yours very truly,

Kevin J. Keith

Kevin J. Keith

KJK/glr

cc: Joe C. Lockhart
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Re: Paul A. Stern, et al -vs-
Tarrant County Hospital
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Gentlemen:

This is to confirm that as Counsel of Record for Respondent, consent has been given to the filing of an amicus curiae brief by the American Osteopathic Association in the above-referenced case.

We would appreciate your sending us a copy of your brief.

Sincerely,

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JOE C. LOCKHART
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JLC/lac